

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JAMES E. BARNES and DEPARTMENT OF DEFENSE,  
DEFENSE LOGISTICS AGENCY, Memphis, TN

*Docket No. 00-1187; Submitted on the Record;  
Issued March 15, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met his burden of proof in establishing that he had a recurrence of disability effective September 30, 1997 causally related to his October 11, 1994 employment injury.

On October 11, 1994 appellant, then a 58-year-old cable installer, was throwing a heavy box of wire on to a shelf when he developed sharp pain in his right shoulder. He underwent surgery on January 19, 1995 for a right rotator cuff tear. He stopped working the date of the surgery and returned to work on March 6, 1995. Appellant underwent surgery for right rotator cuff repair on January 18, 1996 and stopped working at that time. The Office of Workers' Compensation Programs accepted appellant's claim for a right rotator cuff tear and began payment of temporary total disability compensation effective January 18, 1996.

Appellant returned to work on May 20, 1996. In a June 21, 1996 report, a rehabilitation nurse-coordinator reported that appellant was performing his regular duties with restrictions of no lifting over 20 pounds and no work above the waist level. In a September 23, 1996 decision, the Office found that appellant had been reemployed by the employing establishment as a modified cable installer and, based on his actual earnings, had no loss of wage-earning capacity. In a December 4, 1996 decision, the Office issued a schedule award for a 15 percent permanent impairment of the right arm. The period of the schedule award was from October 15, 1996 through September 7, 1997.

On September 12, 1997 appellant filed a claim for recurrence of disability. He indicated that the date of the recurrence of disability was August 12, 1997 but he did not indicate that he had stopped working. Appellant stated that the pain in his right shoulder had never stopped since the original injury. Appellant's supervisor indicated that appellant had been placed on permanent light duty effective May 20, 1997 on instructions from his physician. In an October 6, 1997 letter, the Office instructed appellant to submit claims for any wage loss due to the recurrence of disability.

On October 15, 1997 appellant filed a claim for recurrence of disability, indicating that he had stopped work on September 30, 1997. He stated that he had been unable to perform any aspects of his job due to his shoulder injury. The Office requested further information, including medical evidence relating his recurrence to his employment injury and information from the employing establishment on appellant's job duties after he returned to work.

In a January 23, 1998 decision, the Office denied appellant's claim for compensation on the grounds that the medical evidence of record established that he had not sustained a recurrence of total disability. In a February 11, 1998 letter, appellant requested reconsideration. He repeated his request in a June 18, 1998 letter. In a July 21, 1998 merit decision, the Office denied modification of the January 23, 1998 decision. On August 12, 1998 appellant again requested reconsideration. In an October 28, 1998 merit decision, the Office again denied modification of the prior decisions. In a February 20, 1999 letter, appellant made a request for reconsideration. In a May 20, 1999 merit decision, the Office again denied modification of the prior decisions.

The Board finds that appellant has not met his burden of proof in establishing that he sustained a recurrence of disability after September 30, 1997 that was casually related to his October 11, 1994 employment injury.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>1</sup>

The nurse who was monitoring appellant's rehabilitation noted that appellant returned to his former position with restrictions against lifting over 20 pounds and no work above the waist level. The evidence shows that appellant stopped work on September 30, 1997 because the employing establishment closed. Appellant stated that, before the employing establishment closed, he was restricted to performing only a few tasks, such as answering the telephone. He reported that he had been unable to return to his normal duties because of the pain and the inability to use his right shoulder. He noted that he could not hold his arm above a 45-degree angle. He stated that he could not get under desks, was unable to pull wire, use tools or carry equipment because of his pain restrictions. He indicated that the employing establishment retained him because of his extensive knowledge of the employing establishment's antiquated telephone system. Appellant submitted statements from coworkers and supervisors who indicated that in the last six months appellant worked at the employing establishment he was only able to answer the telephone and perform duties that did not require physical exertion. Appellant also submitted a September 23, 1997 letter from the Office of Personnel Management which informed him that his claim for disability retirement had been approved. The factual evidence shows that appellant's light-duty position was changed to meet his work restrictions.

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<sup>1</sup> *George DePasquale*, 39 ECAB 295 (1987); *Terry R. Hedman*, 38 ECAB 222 (1986).

He, therefore, did not show that his light-duty assignment changed to the point where he was unable to physically perform the light-duty position. The record also indicates that appellant stopped work on September 30, 1997 because the employing establishment closed. A recurrence of disability does not include a work stoppage which occurs due to a closure of a base or other facility.<sup>2</sup>

In an August 20, 1996 report, Dr. Robert Riley Jones, a Board-certified orthopedic surgeon, stated that appellant had undergone two operations to repair his right rotator cuff but it had torn again. Dr. Jones commented that there were not many options because of the thickness of the rotator cuff. He indicated that appellant could not do any work above waist level. Dr. Jones stated that appellant's use of his right upper extremity had to be restricted because he could not abduct and reach over his head. He warned that appellant would cause further damage to his left rotator cuff and noted that he had already reinjured the right rotator cuff just through performance of his normal activities. He recommended that appellant retire to avoid further damage to himself.

In a January 16, 1997 report, Dr. Jones stated that appellant underwent an arthroscopy of the right shoulder with debridement of chronic rotator cuff tear. He reported that he was able to debride the rotator cuff and separate the scar tissue. Dr. Jones indicated, however, that the suture line for the previous surgery had not held and the tissue was too thin to hold any type of suture.

In an April 1, 1997 duty status report, Dr. Jones indicated that appellant could lift up to 20 pounds and could sit, stand, walk, kneel, bend, stoop and twist 8 hours a day. He reported that appellant could perform simple grasping and fine manipulation. Dr. Jones restricted appellant from performing any work above the waist. In a May 20, 1997 office note, he indicated that appellant's light-duty restriction would become permanent. In an August 5, 1997 office note, Dr. Jones related that appellant did fairly well as long as he performed his light-duty work. He commented that there was no surgical procedure to offer appellant. He instructed appellant to continue light duty.

In an October 28, 1997 office note, Dr. Jones noted that the employing establishment had closed. He commented that no one would hire appellant because of his work restrictions. In a July 30, 1998 report, Dr. Jones stated that appellant could only actively abduct his shoulder to 45 degrees and perform external rotation to 45 degrees. He indicated that appellant could raise his arm to 90 degrees but could not hold the position and could not do anything at that position. Dr. Jones reported that x-rays of the shoulder showed cephalad migration with degenerative changes. He commented that appellant might eventually need total shoulder replacement just to hold the shoulder in place. Dr. Jones expressed concern whether appellant's rotator cuff could withstand such surgery. In an August 11, 1998 note, he stated that a review of appellant's case showed he was disabled and unable to perform any type of gainful employment. In a January 14, 1999 note, Dr. Jones stated that appellant was capable of extremely light duty and recommended that he obtain a second opinion. He commented that appellant was "not totally disabled from everything."

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<sup>2</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2)(d) (May 1995).

Dr. Jones, therefore, gave contradictory statements on whether appellant could perform any light-duty position or was totally disabled for work. He gave no opinion on whether appellant's shoulder condition had progressed to the point that he was unable to perform the light duty given by the employing establishment. On the contrary, in the office notes prior to September 30, 1997, Dr. Jones stated that appellant could continue performing light-duty work. In the July 30, 1998 office note, he indicated that appellant's right shoulder condition was deteriorating. However, Dr. Jones did not state at that time whether the deterioration of appellant's shoulder was a progression of the accepted employment-related condition. He did state two weeks later that appellant was totally disabled for work. However, Dr. Jones did not provide a detailed description of appellant's physical condition and did not explain how the performance of appellant's light-duty job requirements caused or contributed to his total disability because of his physical condition. He also did not give any rationalized opinion on whether appellant's total disability was causally related to the October 11, 1994 employment injury. Dr. Jones' reports, therefore, have limited probative value because of the lack of rationale in substantiating that appellant had a recurrence of total disability due to the effects of the October 11, 1994 employment injury. Appellant, therefore, has not met his burden of proof.

The decisions of the Office of Workers' Compensation Programs, dated May 20, 1999, October 28 and July 21, 1998, are hereby affirmed.

Dated, Washington, DC  
March 15, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member